

Supreme Court Sets New Guidelines on Wiretap Evidence

WASHINGTON, March 10 (UPI)—The Supreme Court established Monday a new yardstick for trial court handling of government eavesdropping evidence in espionage and other Federal cases.

Neither the Justice Department nor attorneys for four convicted defendants got what they had hoped for from the court the the controversy over admission of evidence obtained by wiretapping or other "bugging" devices.

ACCESS TO EVIDENCE

In a majority opinion, Justice Byron R. White set up these guidelines:

—The government can use eavesdrop evidence if the de-

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fendant was not a participant to the overheard conversation and the site of the "bugging" was not his home, office or other personal premises.

—If he was a direct party to the conversation or his personal premises were tapped, his attorney may demand access to the wiretap evidence under proper safeguards even in cases involving national security.

—An adversary proceeding must then be held by the court to determine if the eavesdrop evidence was relevant to the indictment. If it was, the defendant can demand that the court suppress the evidence.

The court split sharply in

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sending back for lower court reconsideration the espionage convictions of John William Butenko, an Orange, N. J., engineer, and Igor A. Ivanov, a Soviet chauffeur, and a conspiracy conviction of Felix A. Alderiso and Willie L. Alderman in a Denver case involving threats to a businessman.

SEARCH AND SEIZURE

Attorneys for the four wanted all eavesdrop evidence ruled inadmissible as a violation of the defendants' constitutional protection against unreasonable search and seizure.

The Justice Department wanted the trial judge alone to de-

cide whether the contents of the overheard conversations should be given to the defense attorneys and they should be admitted as evidence.

By a 5-3 vote, the court rejected the claim of the four appellants that the evidence should be barred outright and their convictions reversed. Justices William O. Douglas, Abe Fortas and Hugo L. Black dissented for differing reasons. Justice Thurgood Marshall did not participate.

SCREEN MATERIAL

By the same vote, the court turned down the government's urging that the trial judge alone be allowed to screen the material in national security cases. On this point, Fortas, Black and John M. Harlan dissented.

In arguments on the cases, Solicitor General Erwin N. Griswold said that if the government were obliged to turn over all monitored conversations to defendants, it would have to stop prosecuting most spy cases to prevent important information from falling into the hands of unfriendly governments.

SECRECY ORDER

White said for the majority that it "may be that the prospect of disclosure will compel the government to dismiss some prosecutions in deference to national security of third party interests."

But he said the government faces this possibility when it uses the evidence in such trials.

Further, he added, the trial judge "can and should, where

appropriate, place (the defendant and his counsel) under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect. We would not expect the district courts to permit the parties or counsel to take these orders lightly."

2 CLERICS CLEARED

"None of this means that any petitioner will have an unlimited license to rummage in the files of the Department of Justice," White said.

The court took these other actions:

—Upheld by a 7-1 vote an antitrust decision against two Tucson, Ariz., newspapers that combined their advertising and circulation departments.

—Reversed the Birmingham, Ala., conviction of the Rev. Fred L. Shuttlesworth who with the late Dr. Martin Luther King Jr. was convicted of parading without a permit in a 1963 Easter civil rights demonstration.

—Threw out the disorderly conduct conviction of Negro entertainer Dick Gregory stemming from a protest march around the home of Chicago Mayor Richard J. Daley in 1965.